

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 16

Case No. 16

System Docket No. BMW-E-D-149

STATEMENT OF CLAIM

Appeal of ten-working-day suspension administered to Claimant John Cloutman and request that discipline be rescinded and Claimant made whole for loss of wages and benefits.

FINDINGS

The Claimant was subject to an investigative hearing involving alleged violation of safety regulations, with the following specification:

In that on January 11, 1991 at approximately 2:45 p.m. at the Lowell Tower you sustained a lower back strain caused by your lack of compliance with Safety Rules 4015, 4169, 4253B, 4256AB and 4313; and despite prior remedial safety training and counseling.

The injury occurred while the Claimant was working with others in the back of the truck to which he was assigned as driver. The

employees were transferring tools. Weather conditions involved cold, snow and ice. The Claimant slipped on an icy pallet in the truck body.

Following the investigative hearing, the Claimant was found guilty of failing to work safely, in violation of a number of Safety Rules, and was assessed a ten-working-day disciplinary suspension.

The Claimant's record shows three previous injuries in little more than two years prior to the incident here under review. He was subject to formal counseling and retraining. The Claimant's file includes a record of this counseling, and this was included in the claim handling procedure. The Organization contends that the Claimant was unaware of this document and that it is improperly included in this record. The Board disagrees; the memorandum simply memorializes the counseling which admittedly occurred.

This record shows, however, apparent concurrence that one of these three accidents "could not be directly attributed to [the Claimant's] action". The Organization points out, however, that the Carrier maintains a policy concerning "Corrective Action" which reads in pertinent part as follows:

Corrective Action

When efforts to correct unsafe work practices and/or safety rule violations have been unsuccessful, formal disciplinary action shall be taken.

An employee's continued non-compliance with established safe work practices, instructions or rules shall result in special remedial safety training and finally formal disciplinary action as follows:

1. First instance of violation: Verbal corrective training and counseling by the immediate supervisor. Documentation of corrective action placed in employee file.

2. Second instance of violation: Verbal corrective training by the immediate supervisor and counseling by the general supervisor. Documentation of corrective action placed in the employee file.

3. Third instance of violation: Verbal corrective training by the supervisor. Counseling by the general supervisor with a written warning letter to be placed in the employee's file.

NOTE: The supervisor or general supervisor may, at this time, require the employee to attend a remedial safety training class. This action will depend upon the severity of the three violations.

4. Fourth instance of violation: Verbal corrective training by the supervisor. An investigation/trial must be held at this point, discipline is up to 10 days if found guilty.

NOTE: The employee should, at this point, be required to attend a remedial safety training class. . .

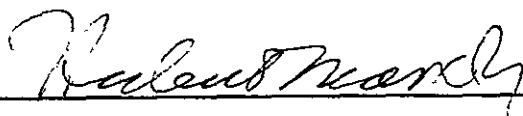
The Board cannot ignore this flatly stated policy. As noted above, the Claimant's record shows two -- not three -- instances of "unsafe work practices and/or safety rule violations". Since this was known prior to the imposition of discipline after the investigative hearing, the disciplinary suspension was premature, since it was not a "[f]ourth instance of violation".

The Board therefore need not consider the degree to which the Claimant was at fault in the January 11, 1991 incident. The

resulting penalty was excessive by the Carrier's own standards. This is not to conclude that discipline may be appropriate where the Carrier's established standards are followed.

A W A R D

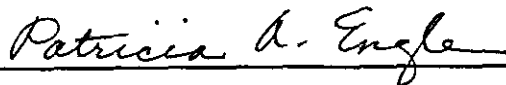
Claim sustained. The Carrier is directed to place this Award into effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: 7-7-92